

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

FARMERS ALLIANCE MUTUAL INSURANCE  
COMPANY, a Kansas corporation,  
and FARMERS CROP INSURANCE  
ALLIANCE, INC., a Kansas  
corporation,

Plaintiffs,

v.

POCO, LLC, a Washington limited  
liability company, and OLSEN AG,  
INC., a Washington corporation,

Defendants.

No. CV-05-5063-FVS

ORDER GRANTING DEFENDANTS'  
MOTION TO COMPEL ARBITRATION

**BEFORE THE COURT** is the Defendants' Motion to Dismiss/Compel Arbitration, Ct. Rec. 5. The Defendants are represented by John Schultz and George Fearing. The Plaintiffs are represented by John Raekes.

**I. BACKGROUND**

The Defendants are potato farmers in the Columbia Basin area. They purchased a crop insurance policy for the 2004 crop year from the Plaintiffs. This policy was reinsured by the Federal Crop Insurance Corporation ("FCIC")<sup>1</sup> under the provisions of the Federal

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<sup>1</sup> The FCIC is a wholly-owned government corporation within the Department of Agriculture. 7 U.S.C. § 1503; *see also Holman v. Laulo-Rowe Agency*, 994 F.2d 666, 667 (9th Cir 1993). The FCIC insures farmers directly and reinsures private companies to insure farmers. 7 U.S.C. § 1508(a).

1 Crop Insurance Act ("FCIA"), 7 U.S.C. § 1501, et seq. The pertinent  
 2 policy provisions included the Common Crop Insurance Policy, the  
 3 Northern Potato Crop Provisions, and the Northern Potato Crop  
 4 Insurance Processing Quality Endorsement. Paragraph 20(a) of the  
 5 Common Crop Insurance Policy<sup>2</sup> provides for arbitration of certain  
 6 disputes. It provides, in pertinent part:

7       20. Arbitration, Appeals, and Administrative Review  
 8           (a) If you and we fail to agree on any factual  
 9               determination made by us, the disagreement will  
               be resolved in accordance with the rules of the  
               American Arbitration Association ....

10 The Northern Potato Crop Provisions required the Defendants to have  
 11 in place a "processor contract" with a potato "processor." The  
 12 policy does not define "processor" but it defines "processor  
 13 contract" as follows:

14       Definitions.

15       Processor contract - A written agreement between the  
 16       producer and a processor, containing at a minimum:

- 17       (a) The producer's commitment to plant and grow potatoes,  
 18       and to deliver the potato production to the processor;  
       (b) The processor's commitment to purchase the production  
       stated in the contract; and  
       (c) A price that will be paid to the producer for the  
       production guarantee stated in the contract.

19       Pursuant to the terms of their policy, the Defendants marketed  
 20 their potatoes each year under contracts executed with Tri Cities  
 21 Produce.<sup>3</sup> When the Defendants suffered losses to their 2004 potato  
 22 crops, they submitted a claim under their policy. During the process

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24       <sup>2</sup> The terms and conditions of this policy are published in  
 25 the Federal Register and codified in chapter IV of title 7 of the  
 Code of Federal Regulations (CFR) at 7 CFR § 457.8.

26       <sup>3</sup> The contracts are entitled the Tri Cities Produce Potato  
 Processing Agreement.

1 of adjusting the Defendants' claims, Plaintiffs came to the  
2 conclusion that Tri Cities Produce "does not actually process  
3 potatoes, and is incapable of processing potatoes at any facility it  
4 owns or operates[.]" Complaint, ¶ 18(a). Plaintiffs further  
5 concluded that Tri Cities Produce "is primarily engaged in the  
6 business of fresh packing and storing potatoes" rather than  
7 processing potatoes. Complaint, ¶ 18(b). Plaintiffs also concluded  
8 that Tri Cities Produce has third-party contracts with licensed  
9 potato processors and Tri Cities only resells for processing those  
10 potatoes that meet the terms of its third-party contracts.  
11 Complaint, ¶ 18(c).

12 Based on these conclusions, the FCIC advised Plaintiffs that  
13 Defendants' contracts with Tri Cities Produce did not constitute  
14 "processing contracts" because Tri Cities Produce was not a  
15 "processor." Consequently, Plaintiffs declined to pay the  
16 Defendants' claims. If Tri Cities Produce is a "processor" and the  
17 Defendants' contracts with Tri Cities Produce are "processing  
18 contracts", Defendants' potatoes have a higher insurable value than  
19 if Tri Cities Produce is not considered a processor.<sup>4</sup>

20 Plaintiffs filed this action for declaratory judgment under 28  
21 U.S.C. § 2201 for the purpose of determining the meaning of the terms  
22 and conditions of the Defendants' insurance policy. Complaint, ¶ 1.  
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24  
25 <sup>4</sup> If the Defendants do not have a "processing contract" with  
26 a "potato processor", their losses will be computed under  
paragraph 4 of the Northern Potato Crop Insurance Quality  
Endorsement, instead of paragraph 6 of the Northern Potato Crop  
Insurance Processing Quality Endorsement.

1 Specifically, Plaintiffs want the Court to determine whether the  
2 Defendants' contracts with Tri Cities Produce constitute "processing  
3 contracts" pursuant to the terms of the policy. Defendants move to  
4 dismiss this action, or in the alternative, compel the Plaintiffs to  
5 submit this matter to arbitration pursuant to paragraph 20(a) of the  
6 Common Crop Insurance Policy. Defendants also request costs and  
7 fees.

## 8 **II. JURISDICTION**

9 The Court has jurisdiction over this action pursuant to 28  
10 U.S.C. § 1332 (diversity jurisdiction) and 28 U.S.C. § 1331 (federal  
11 question). The parties do not contest jurisdiction or venue.

## 12 **III. DISCUSSION**

### 13 **A. Arbitration**

14 Defendants argue the issue of whether their contracts with Tri  
15 Cities Produce qualify as "processing contracts" with a potato  
16 "processor" is a factual determination governed by the arbitration  
17 clause in their policy. On the other hand, Plaintiffs argue that  
18 because the policy does not define "processor", the determination of  
19 whether Tri Cities Produce is a potato processor involves the  
20 interpretation of the language of the policy's provisions and is  
21 therefore a question of law, which does not fall within the scope of  
22 the arbitration clause.

23 While Plaintiffs frame the issue as a legal question involving  
24 the interpretation of an undefined term in the policy, in effect, the  
25 reasons for denying Defendants' claims were based on several factual  
26 determinations: (1) Tri Cities Produce is engaged in the business of

1 fresh packing and storing potatoes; (2) Tri Cities has third-party  
2 contracts with potato processors; (3) Tri Cities is incapable of  
3 processing potatoes at its facilities because it owns no processing  
4 equipment. These are factual, not legal determinations.

5 Although it appears the Defendants dispute these facts, the  
6 Court cannot determine with certainty whether the Defendants  
7 dispute these factual determinations made by Plaintiffs because the  
8 Defendants have not filed an Answer to Plaintiff's Complaint.  
9 Plaintiffs contend that if these facts are not in dispute, only legal  
10 questions remain. In the alternative, Plaintiffs argue that if the  
11 facts are in dispute, any arbitration should be limited to a  
12 resolution of the pertinent facts, but the Court should retain  
13 jurisdiction to resolve any interpretation issues.

14 The Court disagrees that the reason offered by Plaintiffs for  
15 refusing to finalize Defendants' claims involves *only* the legal  
16 effect of certain undisputed facts, and not actual factual  
17 determinations because, as detailed above, the reasons for denying  
18 Defendants' claims were based on several factual determinations with  
19 regard to the definition of "processor." Further, except for the  
20 dispute concerning the definition of a processor, the Agreement  
21 satisfies the three requirements of a "processor contract."  
22 Therefore, the Court determines that pursuant to paragraph 20(a) of  
23 the Common Crop Insurance Policy, this case should be submitted to  
24 arbitration. This conclusion is consistent with other federal  
25 decisions wherein the court interpreted the proffered reasons for  
26 denial of payment as presenting purely factual determinations, not

1 legal questions. See e.g., *Ledford Farms, Inc. v. Fireman's Fund*  
2 *Ins. Co.*, 184 F.Supp.2d 1242 (S.D.Fla. 2001) (interpreting "practical  
3 to replant" to be a factual determination and requiring the parties  
4 to resolve their dispute through arbitration); *Nobles v. Rural Cmty.*  
5 *Ins. Servs.*, 122 F.Supp.2d 1290 (M.D.Ala. 2000) (finding whether  
6 insured lands have been harvested within required period of time  
7 constitutes a factual determination and compelling arbitration).

8 **B. Attorney Fees**

9 Defendants rely solely on the following passage from *Olympic*  
10 *Steamship v. Centennial Insurance*, 117 Wn.2d 37, 53, 811 P.2d 673,  
11 681 (1991), to support their request for attorney fees and costs.

12 ...we believe that an award of fees is required in any  
13 legal action where the insurer compels the insured to  
14 assume the burden of legal action, to obtain fully the  
15 benefit of his insurance contract....

16 *Olympic Steamship*, 117 Wn.2d at 53, 811 P.2d at 681.

17 In *Olympic Steamship*, the Court affirmed an award of attorney  
18 fees and costs to the insured. However, *Olympic Steamship* is not  
19 controlling of the issue before the Court for two reasons. First,  
20 the decision in *Olympic Steamship* was controlled by state law, while  
21 the policy at issue in this case was issued under the authority of  
22 the Federal Crop Insurance Act, which specifically provides for  
23 federal preemption of state and local rules, regulations and statutes  
24 that conflict with the policy provisions. Second, in *Olympic*  
25 *Steamship*, the trial court awarded attorney fees and costs to the  
26 insured pursuant to a specific provision within the insurance policy.  
Here, the policy at issue specifically precludes an award of attorney  
fees and costs. The policy state, in pertinent part:

1 25. Legal Action Against Us.

2 ...  
3 (c) Your right to recover damages ... attorney fees,  
4 or other charges is limited or excluded by this  
5 contract or by Federal Regulation.

6 26. Payment and Interest Limitations.

7 (a) Under no circumstances will we be liable for the  
8 payment of damages ... attorney's fees, or other  
9 charges in connection with any claim for  
10 indemnity, whether we approve or disapprove such  
11 claim.

12 31. Applicability of State and Local Statutes.

13 If the provisions of this policy conflict with the  
14 statutes of the State or locality in which this policy  
15 is issued, the policy provisions will prevail. State  
16 and local laws and regulations in conflict with  
17 Federal Statutes, this policy, and the applicable  
18 regulations do not apply to this policy.

19 Common Crop Insurance Policy, p. 1-18 of 20; 7 C.F.R. § 457.8.

20 For these reasons, the Court denies the Defendants' request for  
21 attorney fees and costs. Accordingly,

22 **IT IS HEREBY ORDERED:**

23 1. Defendants' Motion to Dismiss/Compel Arbitration, **Ct. Rec.**  
24 **5**, is **GRANTED IN PART AND DENIED IN PART**. The parties **shall submit**  
25 **this matter to arbitration** and the case shall be **STAYED** pending the  
26 outcome of that arbitration.

**IT IS SO ORDERED.** The District Court Executive is hereby  
directed to enter this Order, furnish copies to counsel, and **STAY**  
**THIS CASE.**

**DATED** this 23rd day of August, 2005.

s/ Fred Van Sickle  
Fred Van Sickle  
United States District Judge